IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

MFA.No. 1335 of 2002(B)

OPMV.2425/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
.....

APPELLANT: PETITIONER

M.J.SEBASTIAN, AGED 71 YEARS, SON OF JOSEPH, MUTTATHUPARA HOUSE, ALAPRA P.O., KARIKKATTOOR, KOTTAYAM.

BY ADV. SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SRI.RADHIKA RAJASEKHARAN P.
SMT.NITHYA.K.

RESPONDENTS: RESPONDENTS
---

1. N.THANKAPPAN, C3/1, H.M.T. QUARTERS, H.M.T. COLONY P.O., KALAMASSERY.

2. T.ANILKUMAR, C3/1, H.M.T. QUARTERS, H.M.T. COLONY P.O., KALAMASSERY.

3. THE NATIONAL INSURANCE CO.LTD., KALAMASSERY.

BY ADV. SRI.LAL GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No. 1335 of 2002

Dated this the 8th October, 2007.

J U D G M E N T

The claimant in O.P.(M.V.) No.2425/1996, on the file of the Motor Accidents Claims Tribunal, Ernakulam, is the appellant. Appellant filed the original petition claiming compensation against the respondents. It was averred that at about 2.40 p.m. on 10.5.1996, the claimant was travelling as a pillion rider in a motor cycle. When he was alighting from that, a scooter bearing Registration No.KEF 1439, ridden by the second respondent came in a rash or negligent manner and hit against the person of the appellant, causing injuries to him. It was averred that the accident occurred due to the negligence of the rider of the scooter. The vehicle was covered with a valid policy of insurance and hence he was entitled to get the compensation. Respondents 1 to 3 though served with notice, did not appear and contest. The Tribunal found that the appellant failed to give full particulars, and that there was no clarity in his evidence. It was also held that appellant did not produce the originals or certified copies of the documents, and dismissed the original petition. Challenging that award, this appeal is filed.

2. The learned counsel appearing for the appellant has argued that the reasons stated by the Tribunal for dismissing the original petition is illegal. It is argued that in the petition, the appellant had stated that the accident occurred, when the scooter in which the second respondent was riding, hit against the body of the person of the appellant. It is averred that the appellant was travelling in another motor cycle, and when it reached the place of accident, the motor cyclist stopped the vehicle, so as to enable the appellant to get down from the vehicle. According to the appellant, when he was alighting from the vehicle from the vehicle, the accident occurred. It is argued that the failure or omission to note the particulars of vehicle in the original petition will not make the case a false one. It is further argued that the particulars of the vehicle are not contradictory to the case, but is only something which supplements the case of the appellant. It is submitted that appellant did not get reasonable opportunity to produce the documents.

3. After considering the facts of the case, I am of the view that it is only just and proper that another opportunity is given to the appellant, as well as the respondent to contest the matter on its merits. For that purpose, the case has to go back.

In the result, the appeal is allowed. The award passed by the Tribunal dismissing the claim petition is hereby set aside. O.P. (M.V.) No.2425/1996 is remanded. The Motor Accidents Claims Tribunal, Ernakulam, is directed to take that Original Petition back to file, and dispose of the same, afresh, in accordance with law, after affording an opportunity to the appellant as well as respondents to file or amend pleadings already filed, and to adduce evidence, if any.

Parties shall appear before the court below on 7.11.2007.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 1335 of 2002

J U D G M E N T

Dated: 8th October, 2007.